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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 382

WALTER E. BANTOM, JR., ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The petitioners, Walter E. Bantom, Jr., et al., by their counsel of record, pray that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled case on May 15, 1964. (R. 123)

OPINIONS BELOW

The Opinion of the United States Court of Claims is set forth in the record on pages 95 to 115. It is also set forth on pages 1 et seq. of the Appendix to the Petition.

JURISDICTION

The final judgment of the United States Court of Claims was entered on May 15, 1964, page 25 of the Ap-

pendix. This petition is filed within 90 days from the date of the judgment. Jurisdiction of this Court is invoked under Title 28 U.S.C. 1254(1)

QUESTIONS INVOLVED

Whether the petitioners, who are employed as Security Policemen in the Frankford Arsenal at Philadelphia, Pennsylvania for a period of time more than 40 hours per week, are entitled to receive payment for one-half hour each working day when they are on duty for a period of 8½ hours when in fact they only receive pay for 8 hours.

STATEMENT OF THE FACTS

The petitioners in this action filed a petition on December 29, 1961 claiming overtime compensation from the period of December 29, 1955 for one-half hour each working period. During the period of time the petitioners were employed from December 29, 1955 to the date of the filing of the petition, the petitioners were rotated in their capacities as Security Policemen in what was known as three shifts. The "A" shift was from 7:30 in the morning to 16 hours in the afternoon; the "B" shift was from 15:30 to 24 hours; and the "C" shift was from 23:30 to 0800 hours. The Court will immediately note that each of these shifts was for a period of 8½ hours. The time indicated herein is the manner in which the Navy computes time.

During the 8½-hour period of each tour of duty the petitioners were in full uniform with side arms attached and in a duty status during the entire period of time. Ninety percent of the petitioners brought their own lunch during the "A" and "B" scheduled tours of duty. The "C" shift was from 11:30 at night until 8 o'clock the next morning and there were no facilities for eating on the

premises during this time. Many of the petitioners who reported for the "C" shift had already had their meal at home before reporting for duty and worked the 8½-hour period with no time out for eating. This was the situation at the time the suit was filed on December 20, 1961. After the filing of this suit the officials of the Frankford Arsenal issued an order effective in May, 1962 and for the first time the petitioners were given a one-half hour free time for a lunch period. It was the first time that they were permitted to remove their uniforms, take off their side arms and not be subject to call for duty during this period of time. The Respondent's witnesses testified that prior to the order effective May, 1962 all of the petitioners were in a duty status during the time covered by each of the shifts "A", "B" and "C". This fact is undisputed.

The petitioners only asked for a recovery of overtime until the order became effective in May, 1962. They limited their right to recovery to the hours worked prior to that time. The Respondent asserted that they were given the one-half hour for lunch period while in a duty status.

REASON FOR GRANTING THE WRIT

The petitioners assert that the application for a Writ of Certiorari is made in accordance with subdivision (b) of paragraph (1) of Rule 19 of this Court in that the United States Court of Claims has decided an important question of Federal law in conflict with the applicable decisions of this Court and the decisions of the United States Court of Appeals for the Sixth Circuit, the United States Court of Appeals for the Eighth Circuit and the United States Court of Appeals for the Ninth Circuit in cases similar, all of which will be hereinafter cited to this Court.

The petitioners also assert that the decision in their case is contrary to the ruling of the United States Court

of Claims in the case of Albright v. U. S., 263-61 and Baker et. al. v. U.S., 328-61. The Albright and the Baker cases have not yet been officially reported.

The question involved in this case is whether the petitioners are entitled to recover for a one-half hour of each working shift in which they were in a duty status. The attorneys for the Respondent assert that this was a lunch period. The petitioners assert that they were in a duty status during all of the 8½ hours of each shift and that they ate their lunch, which 90% carried with them, while in this duty status. It is undisputed and even testified to by the witnesses for the Respondent that they were in a duty status during all of the 8½ hours. The first time that they got a one-half hour free time for lunch period was after the order of May, 1962 was issued by the officials of the Frankford Arsenal.

The question, therefore, and a very simple one, is whether petitioners in a duty status can be charged for a lunch period. The great weight of authority is to the contrary, as will be shown by the citations hereinafter referred to. In the case of *Armour and Company* v. *Wantock*, 323 U. S. 126, this Court said that the work week ordinarily included all time during which an employee is necessarily required to be on the employer's premises on duty or at a prescribed place. See also *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680.

The Courts have applied the basic principles to lunch hours, and have quite uniformily held that an employee must be completely relieved from duty for the purpose of eating regular meals if such periods are to be eliminated from the computation of the number of hours worked by the employee. It has been held by the Courts that an employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, it has been held that an office employee who is

required to eat at his desk or a factory worker who is required to be at his machine while eating is entitled to be compensated. *Culkin* v. *Glenn L. Martin*, Nebraska Co. 97 F. Supp. 661, aff'd. 197 F. 2d 981. (C.C.A. 8), cert. denied 344 U.S. 866, rehearing denied 344 U.S. 888. The case of *Culkin* v. *Martin* is squarely in conflict with the opinion of the U. S. Court of Claims in this case. In the case of *Martin* v. *Culkin*, the Eighth Circuit Court of Appeals pointed out that the lunch period constituted working time. It was emphasized that the guards were required to remain in uniform, including caps, continued to wear sidearms and that they could not remove any part of their uniform during the lunch period. Furthermore, if anything happened they were to act even though it were a lunch period. They were requested to continue to observe signal lights in the cafeteria. The Court held that they could not deduct a thirty minute lunch period from the working time and that this period was compensatory.

It would be difficult to find a case which was closer to the facts as applied to the facts in the petitioners' case than in the case of *Martin* v. *Culkin*. This Court will note particularly that the application for a Writ of Certiorari in the case of *Martin* v. *Culkin* was denied. There are many cases following the rule laid down in *Martin* v. *Culkin*. See *Biggs* v. *Joshua Hendy Corp.*, 183 F. 2d 515 (Ninth Circuit); *F. W. Stock & Sons, Inc.* v. *Thompson*, 194 F. 2d 493 (Sixth Circuit).

The opinion of the United States Court of Claims in this case conflicts with the opinion in the cases of *Albright* v. *U. S.* 263-61 and *R. B. Baker et al.*, v. *U. S.*, 323-61. Neither of these cases are officially reported. In the Albright and Baker cases the petitioners were security policemen employed in the Norfolk Shipyard, Norfolk, Virginia. They sued for overtime pay. They were required to report

fifteen minutes before the daily shift began and they sued for this fifteen minutes. They were then on duty for a period of eight hours. The Court held that they were entitled to recover for this fifteen minutes of time. Then the government attorneys raised the point that a one-half hour lunch period should be a proper set-off against their recovery for the fifteen minutes of time. The security policemen in these cases were doing exactly the same type of duty as the petitioners in this case. The policemen in the Albright and Baker cases brought their lunches with them and ate them while they were in a duty status and the Court held that the government did not have a set-off during this lunch period. There is no difference at all in the fact as to the manner in which the petitioners in this case ate their lunch and the security policemen ate their lunch in the Albright and Baker cases. The United States Court of Claims had the right to overrule their opinion in the Albright and Baker cases but they did not do so. They simply ignored what their conclusion has been in the Albright and Baker cases as applied in the undisputed cases. In other words, they established a rule for security policemen employed by the Navy Department and another rule for security policemen employed by the Department of the Army. The two opinions simply cannot be reconciled. If the Albright and Baker petitioners are entitled to recover, the petitioners in this case certainly are entitled to recover. There is no difference between the facts.

There are set forth in the addendum portions of undisputed testimony which, by stipulation of the parties, is reflective of the testimony which would have been given if all of the Petitioners had been called. In addition there are included excerpts from testimony of Government witnesses who were supervisors and which corroborate the facts established by the Petitioners.

Faced with a record showing, without dispute, that there were substantial periods of working time for which

compensation was due by statute and regulation, the Court of Claims sought to excuse respondent's liability by injecting a new theory of law which, not only was without rational support, but is contrary to long standing and well settled principles of law in the field of management responsibility. The "new approach" is that an employer is relieved of responsibility for the payment of statutory wages where the employee does not complain of being short-changed. This, the Court said, immunized the employer from responsibility because he did not know of the violation.[1]

Aside from the fact that the work was being performed within the confines of an army arsenal in the physical presence of the superior officers and under strict supervision, it has never been held that ignorance on the part of management excused a failure to comply with statutory standards which required an employer to properly count hours and pay wages. The principle is well stated in Lenroot v. Interstate Bakeries Corp. 146 F. 2d 325, 328:

> As pointed out by Judge Cordozo in People v. Sheffield Farms-Slawson Decker Co. 225 N.Y. 25, 121 N.E. 474, 476, the mandate of the statute is directed to the employer and 'he may not escape it by delegating it to others.' The 'duty rests on the employer to inquire into the conditions prevailing in his business. He does not rid himself of that duty because the extent of the business may preclude his personal supervision, and compel reliance on subordinates.'

The Court's further attempts to justify its conclusion by relying on the rationalization that there existed a Standard Operating Procedure which, if carried out, would have provided relief for lunch during which employ-

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[1] As a matter of fact the witnesses testified and the Chief of Security Police Branch admitted that management knew but did not act. (Tr. 423-428)

ees might have taken a lunch period in excess of 20 minutes.[2] The statute fortunately does not provide an exception for good intentions. There is, of course, no need or justification for devising a spurious rule of law to excuse respondents in the face of the solid, uncontroverted testimony establishing that the employees worked right through the "C" shift and the Saturday and Sunday shifts without any interruption, that on other shifts there were no regular hours or places for lunch, that relief was sporadic, that employees were in duty status with guns and uniforms being worn, that lunch, when taken, did not exceed 20 minutes. The Court had only to follow its own decision in the *Albright* and *Baker* cases and the long line of lunch-hour cases typified by *Culkin* v. *Martin* (supra) to arrive at an appropriate answer.

Finally, statutes which seek to discourage long hours of employment and to reward employees for arduous overtime are to be construed broadly to achieve those purposes and not narrowly so as to deprive employees of the statutory protection. U. S. v. Silk 331 U.S. 704, 712, 91 L. Ed. 1757, 1767, Rutherford Food Corp. v. McComb, 331 U.S. 722, 727 91 L. Ed. 1772, 1777.

It is obvious from the survey of the evidence before the Court of Claims that the decision does not turn on absence of proof. Instead, the Court breaks new ground in the field of judicial determination of the meaning of "hours worked." This is seen in the key paragraph on page 7 of the decision which states:

> Apart from absence of proof as to when these instances occurred, it is significant that plaintiffs made no complaint to the responsible officials; indeed, such officials had no knowledge of the situation. In these circumstances, work performed by policemen during these periods cannot be said to have been "officially

[2] S.O.P. 513 (Revised June 1956).

ordered or approved" so as to be compensable under the Pay Act.

Thus the whole conception of the meaning of what is working time as defined by this Court is challenged by this determination of the Court of Claims (*Tennessee Coal Iron and RR Co.* v. *Muscade*, 321 U.S. 590, 88 L. Ed. 949, 645 Ct. 698, *Armour and Co.* v. *Wantock* 323 M S 126, *Skidmore* v. *Swift*, 323 U.S. 134, 137, *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680).[3]

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[3] It is on the principles established by these cases that the Court of Appeals have settled the law in the "lunch hour" cases supra and which have guided the Secretary of Labor in formulating long existing interpretations of "hours worked" as applied to Rest & Meal Periods as shown by *Part 785—Interpretative Bulletin on Hours Worked* issued by the U.S. Department of Labor which provides:

Section 785.17—ON-CALL TIME

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call." An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

REST AND MEAL PERIODS

Section 785.19—MEAL

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co. 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952) cert. denied 344 U.S. 866 (1952) rehearing denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc. 93 F. Supp. 213 (E.D. Mich. 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp. 183 F. 2d 515 (C.A. 9, 1950), 187 F.2d 447 (C.A. 9, 1951), and other cases cited.

CONCLUSION

For the reasons herein stated, the petitioners pray that a Writ of Certiorari be granted in the United States Court of Claims and that upon a hearing that the opinion and judgment of the said Court of Claims be in all things reversed and that this cause be remanded to that Court with instructions to proceed in accordance with the opinions of this Court.

Respectfully submitted,

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ADDENDUM

In support of the general statement of facts, hereinbefore shown, the following extracts from the transcript of the hearing are shown to this Court.

Petitioner HAWKINS—Direct

[Tr. 38] Q How many, do you think, brought their lunch with them? A I would say 85 or 90 per cent.

Q Ninety per cent brought their lunch with them? A Yes.

[Tr. 39] Q All right. Now, on the "C" shifts, what facilities (eating purposes) were there? A None.

Q In other words there was no place where food could be obtained on the "C" shift? A That's right.

[Tr. 40] Q I ask you this, Mr. Hawkins, did you ever observe these security officers that were driving motor vehicles where they were eating their lunches? A Yes, I have.

[Tr. 47] Q Mr. Hawkins, was there any change as the time for lunch periods in March, 1962? A In March 1962 there was no change. In May, 1962, I think May 25th, we got an order from the Provost Marshall, which was posted, which indicated that the supervisor there would be responsible to see to it that each man was entitled and had a half hour's lunch.

Q I see. Was that the first time you ever got an official order that you had a half hour for lunch? A That's right. That is the first time we knew—

[Tr. 49] Q Mr. Hawkins, can you tell us anything more in reference to the eating facilities for lunch periods at the Frankford Arsenal during the time from December '55 to the time you quit there? A Yes. I can say this: That this was an organizational setup. In other words, we never took the attitude that while we were eating, that we had free time, because we felt as policemen there was no such a thing when you were on

duty. We were still carrying our side arms. We were still subject to call—subject to conditions. If a fire alarm broke out, we had to go to duty. It was not a question of whether or not you were aloof or away from your duty; you were always assigned. If you were going to lunch and a disturbance happened—a car accident happened—you had to take hold and take charge of that particular incident.

[Tr. 51] . . . Now, if you ate, you had to eat according to the conditions that exist, and this everybody is aware of. It was a sense of duty. It wasn't a question of whether you ate 10 minutes, 5 minutes, 15 minutes or 20 minutes. It was a question of trying to get dinner whenever you could. We felt and we still contend that from the time we come in the arsenal until the time we hit out, we are on duty, and we always have. And I still think the men still feel that way.

HAWKINS—Cross Examination

[Tr. 84] Q Did you ever miss a lunch? A Yes—many a day.

Q Many times? A Many a time.

Q Wasn't it true if you desired relief and requested it you could have it? A No, it wasn't.

HAWKINS—Cross—by Commissioner

[Tr. 88 and 89] THE COMMISSIONER: Now, would you regard this as free time?

THE WITNESS: No.

THE COMMISSIONER: The time you are spending in the cafeteria?

THE WITNESS: No. First of all let me tell you about this newspaper. We have had plenty of incidents—we have had numerous incidents about newspaper. If I read that newspaper I would be doing it on the QT because I would be on the assumption that if the captain came in and seen me reading that newspaper he would

assume I was goofing, you might say. This is—you are a policeman. This is not a civilian set up down there. And it just isn't done. You don't go in and sit down and relax and read no newspaper. If the provost marshall was to walk in I would have to answer to him as to why I was reading that newspaper. This is a condition that—it just didn't occur. It just didn't occur.

Petitioner HART—Direct

[Tr. 115] A . . . And on the "C" shift there were no facilities at all and on the weekend there were no facilities on for any shift.

[Tr. 116] Q Was the security police maintained on the weekends, on Sundays and Saturdays? A Yes, you still worked your rotating shifts on the three days with a cutback of personnel. If there were no employees and the workload was less, you had a slight cutback in the size of your personnel. In the later years, I would say after the Korean crisis, things like that, the personnel picked up.

[Tr. 117] . . . Q Now did you, during the time you were on the "C" shift, bring your own lunch with you? A No, I have never brought a lunch. I just—if I would eat prior to that, I never had brought a lunch on the "C" shift.

HART—cross

[Tr. 176] Q Then basically what you are saying is that your meal was perhaps subject to interruption, in other words, what— A Not subject to interruption? It was interrupted. Positively it was interrupted.

[Tr. 177] Q But as a general rule, you got it, didn't you? A No, I wouldn't say as a general rule I got it. On the "C" shift it was questionable—

[Tr. 177] Q That's because you didn't carry your lunch? A No, I wouldn't say that. I could have carried a lunch, I could have brought a lunch. But the factor of eating the lunch and putting it somewhere where it would

be presentable to eat, where I could have ate it and such, no.

Q Weren't there reliefs on the "C" shift? A In the last six years? I would go on record to say you would have to show me with documentation where.

Q I am asking you. A No. I would say no. No, no.

Q Did you ever ask for relief on the "C" shift to go to eat lunch? A You know it was asinine to ask the question because you couldn't get it.

[Tr. 178] Q Did you eat lunch on the "C" shift? A No, I wouldn't say that I had to ask for lunch because it was already a stipulated time documented into your work that you didn't get and we argued about it at various times.

Petitioner WEST—Direct

[Tr. 248] A Well, there was no opportunities at all to get anything to eat over there on the "C" shift. And therefore I never carried a lunch on "C" shift, never carried a lunch on "C" because I eat before I came in and I always went home and ate a good breakfast.

Q So that you spent on "C" shift, you spent the 8½ hours on patrol duty; is that correct? A Right, on patrol duty. Yes, sir.

KINCAID—Cross

[Tr. 276] Q In regard to matters such as overtime, lunch periods, and things like that, did you have any complaints on that score? A Well, a lot of times I didn't get my lunch period and I went to the captain, asked—he said, "Well, bear along. It doesn't happen all the time." He said, "We are shorthanded today. This here fellow didn't come in," or "We got another special detail," or something, "and we didn't expect it," and all this kind of stuff. They always had a good alibi for you.

[Tr. 277] Q Was it irregular, or was it seldom or occasionally, that you didn't receive your lunch? A No, it was quite often we didn't receive our lunch.

WEST—Cross

[Tr. 283] THE COMMISSIONER: If they did not have a relief man, then you would have to eat your sandwishes and cake?

THE WITNESS: Right at the box.

[Tr. 284] THE COMMISSIONER: How often when you got the post, either Post 29 or 32, did it come to pass that you couldn't get relief?

THE WITNESS: Well, I will say half the time down there.

WEST—Redirect

[Tr. 299] Q All right, I will ask you this—and in view of the fact the regulation is in here, as counsel well knows, that it gives you 20 minutes with pay, I will ask you this: Mr. West, at any time in your lunch period, how much time did you take on any of your lunch periods that you had? A Mostly I only took about fifteen minutes.

Petitioner DUBIN—Direct

[Tr. 312] Q Yes. Let me ask you this, then, let's take your "A" shift first, what opportunity did you have to eat your lunch on "A" period? A No opportunity at all, sir.

Q Will you explain that, why you had no opportunity? A Well, for the simple reason there is always special duties that came up. There was either special visitors that were coming in, or else there was checking the cafeteria around the cafteria for badges, people that thoughtlessly rush out.

[Tr. 313] Q Let me ask you this, how did you eat your lunch when you were on that "A" shift then? A I didn't sir.

Q Did you carry your lunch with you? A No, sir, I ate two good meals at home.

[Tr. 313] Q In other words, you didn't eat any? A Well, sometimes if I was on a stationary post, I could send out for someone to get a cup of coffee or something like that. Afterwards we set up our own coffee—

Q You never took any time off to go to the cafeteria or snack bar? A No, sir. You couldn't go to the cafeteria. You only had a certain time element and we didn't have no special time for lunch. If you was later than 1:30, the cafeteria was closed.

[Tr. 314] Q I see. That's 1:30 in the afternoon? A Yes, sir. And another thing, sir, as far as the snack bar was concerned, they have what was called janitor service, and they had these janitors coming in here with big baskets in which they carry coffee and they order lunches for the shops. You couldn't even get in there if you tried to get in there.

Q What opportunity did you have for eating on the "B" shift then? A Well, it all depended where you was. If you was on an extreme area, you could make it and sometimes the only way you could get a lunch would be to actually call the snack bar and order something and then maybe sometime later in the day somebody would be patrolling, they would bring it out to you. But there was no time at all for lunch.

[Tr. 315] Q When you were on the "B" shift—and is this true during all the years that you were on that shift? A Yes, sir.

Q I see. Now, how about on your "C" shift? What was the opportunity? What opportunity did you have for lunch period on that? A No opportunity at all, sir. No cafeterias or snack bars or anything.

Q Did you eat on the "C" shift? A No, sir.

DUBIN—Direct

[Tr. 316] Q . . . Mr. Dubin, did you work continuously when you were on the "A" shift from the time prior to the time of roll call to the time that you quit? I mean when you checked out. A Yes, sir. Yes, sir.
[Tr. 317] Q Did you work the same period of time on the "B" shift? A Yes, sir, I worked on all the shifts the same way.

Q Did you work on the "C" shift the same way? A Yes, sir.

Petitioner SHIELDS—Direct

[Tr. 335-E] Q I want to know then on your "A" shift how much time, if any, did you consume in eating your lunch? A Well, like I say, Mr. Dawson, that again is—it would be opinionated on my part because I would say I never actually got a prescribed scheduled lunch period. I ate when I got a shot at it, that's about it.

Q Where would you get your food? A Well, if I didn't bring a sandwich, I had to sneak in the cafeteria—walk in the cafeteria, get one of those 30 cent plates, and wrap it up and go right out.
[Tr. 335-F] Q When you did have a lunch, did you remove any part of your uniform? A You couldn't remove any part of your uniform up until 25 March 1962.

Q Could you remove any part of your side arms? A You couldn't sir.

Q From the time you went on duty on the "A" shift, were you in complete uniform until such a time as you checked out? Checked out of the "A" shift. A Yes sir.
[Tr. 335-G] Q Then was there any time during the time you were on the "B" shift that you could sit down and eat a meal like you would at home, at a table, or anything like that? A I will tell you, Mr. Dawson, the answer is no.

SHIELDS—Direct

[Tr. 335-H] Q . . . What opportunity, if any, did you have for opportunity, if any, did you have for opportunity on the "C" shift for a lunch period? A On the "C" shift, there isn't anything actually. There is no facility. You have to bring your own lunch on the "C" shift, starting at 11:30.

Q When you were on the "C" shift, did you bring your own lunch? A Yes, sir, I brought my own lunch.

Q Where did you eat then? A Same place we do now, one of the desks where you are working.

SHIELDS—Cross Examination

[Tr. 340, 341] BY MR. KINCAID:

A With the risk of being boring and repetitious, we claim that we worked 8½ hours for which we were paid for 8 hours. We worked continually for 8½ hours for which we were paid for only 8 hours. That was our claim to GAO. We were at no time completely divorced from our job for 8½ hours.

SHIELDS—Redirect

BY MR. DAWSON

[Tr. 355] Q I would like to ask you this, despite the fact the regulation provided for a half-hour lunch period did you or any other man ever get a half-hour period for lunch? A Like I say again, like I said to Mr. Kincaid, in our petition, we filed that we worked 8½ hours for which we received compensation for 8 hours, and we were on the job continually for 8½ hours and we ate when we could like any policeman.

[Tr. 356] SHIELDS—Redirect
Recross

Recross Q —any definite time of 30 minutes for lunch where you could sit down and eat your meal? A No, sir. You ate on the fly, whenever you could get a chance.

REYNOLDS—Direct

[Tr. 386] Q . . . "Lunch periods during which the employee is entirely free from duty in connection with his job may not be considered duty time and must be scheduled outside the hours established for the daily tour of duty. When three 8-hour shifts are in operation, however, and overlapping of the shifts to permit time off for lunch is not possible, a lunch period of 20 minutes or less may be counted as time worked for which compensation is allowed. Where the on-job lunch period is in effect, employees must spend their time in close proximity to their work stations. Where the lunch period is free time or if longer than 20 minutes, the entire period may not be included in the daily schedule, the working hours, so that the employees are paid for the lunch period." A Yes, sir, I am familiar with it.

Q And during the time that you ate at the cafeteria or other times, how much time do you consume? A I don't think I would consume more than 20 minutes in the cafeteria, not even that much the majority of the time.

Q That's on the "A" schedule? A On the "A" schedule.

[Tr. 387] Q What about the "B" schedule? A "B" schedule, I never—they had a place where you could get a sandwich or cup of coffee or like that.

Q How did you eat during that period if you did eat? A I brought my own lunch.

Q Where would that be eaten? A In headquarters.

Q At your desk? A At my desk.

[Tr. 388] Q Now, what opportunity did you have, if any, for a lunch period during the "C" shift? A Well, on the "C" shift, I don't think we had any opportunity for lunch period other than bringing your own lunch.

Q Were there any restaurants? A No place in the immediate vicinity was open on the "C" shift nor on holidays, Saturday and Sunday.

[Tr. 400] Q Now, you testified that the men ate in the cafeteria on or around the "A" shift. Was there a time when you gave somebody 30 minutes to eat his lunch during the period of time covered in the petition? Not since the extended lunch period. A Well, I never designated any time or limit on the lunch period. Usually we encouraged the men to eat their lunch as soon as possible and get back so they could relieve the other men on the base.

[Tr. 401] THE WITNESS: Yes, sir. We tried to get the men to eat and be back on the post as soon as possible. As I pointed out before, we do have a train problem coming through there during the day, and any other emergencies that might arise; we like to have the men available where we can utilize them.

Q All right, let me ask you this, Mr. Reynolds: On the "B" shift and on the "C" shift, when no places were available, did you ever ask for a 30-minute leave on those shifts? A Well, I never had nobody—as I recall—ask for a 30-minute relief.

[Tr. 402] Q Nobody ever asked for a 30-minute relief? A Not as I know of.

Q All they would ask you for is for a few—

MR. KINCAID: Objection.

Q I am asking this: What would they ask for? A Usually if they didn't get lunch, they would call up and say "I didn't get no lunch relief." That is the extent—

Q You would send a man down there, would you? A I would send a man down if he were available.

Q Any time, did that consume more than 20 minutes at any time? A Well, I don't know. I couldn't say that it did or did not. Usually we directed a man to go down and relieve him for lunch. And sometimes they would have two or three other ones to relieve for lunch. And usually

we let them work it out to their best satisfaction, to get the job done the best way we could.

REYNOLDS—Recross

[Tr. 406-407]

BY MR. KINCAID:

Q I show you, Mr. Reynolds, what has been marked as Defendant's Exhibit 6 for identification and ask you if this is the order of which you speak? (handing document to witness) A Yes, this is the order that was published.

Q What is the date shown thereon? A Twenty-fifth of March 1962, effective date shown.

Q Does this represent a change from what was done before? Or do you say Plaintiffs' Exhibit 6 authorizing 30-minute lunch periods wasn't the same? A Yes, this represents a change.

Q Would you specify in what way this is a change? A Well, you have here this—you weren't allowed to leave the post prior to this, the installation you were assigned to, wasn't allowed to leave it. The old orders, they weren't allowed to remove any parts of their uniform. And, well, they would be the main changes I would say.

WARD—Direct

WITNESS FOR RESPONDENT

[Tr. 417-418] Q In what capacity are you employed? A Chief of the Security Police Branch.

[Tr. 423-424] Q Now, in March of 1962, an addition to the SOP's was issued relative to free lunch time? A It was not an addition to the SOP. I believe it was put out either in disposition form or by memorandum, or by letter.

Q Did that in your view change existing practice? A Yes, because it gave them free time.

Q But did it change existing practice to the extent that the men were for the first time to be given 30 minutes for lunch? A To be given 30 minutes' free time for lunch.

Q But did the men have 30 minutes for lunch prior to the time? A Not always, no sir.

Q What do you mean "not always?" A Not always. Quite a number of times the shift officers didn't get lunch themselves.

[Tr. 424] Q Was that brought to your attention? A Yes, it was.

Q Did you bring it to the attention of the Provost Marshal? A Not to the best of my knowledge, no.

Q Why didn't you bring it to the attention of the Provost Marshal? A Well, this has been going on for quite sometime and they did a lot of griping about it, but that's all the further it went. The Chief also knew it was going on. It has been going on—if I may say this, Your Honor—since I have been on the guard force, which was back in 1948.

[Tr. 425] Q Now from 1955 to 1962, you say that although regulations stated a man was to have a 30-minute lunch period, on occasion he did not get it? A That is correct.

[Tr. 428] Q So you state that even though Colonel von Benge told you to take a half-hour lunch period, it was humanly impossible for you to do so? A That is correct. I am not griping about it.

[Tr. 434] Q I ask, Chief, do you have certain posts that you designate as relief posts, men who are to perform only the function of relieving— A I never have been that fortunate enough on all shifts to do that.

Q Do you have posts set up that way? A We would like to have but we just don't have the manpower for it.

Q In your SOP's, don't you have provisions for relief posts? A This is correct, we do. But we just can't man them, sir.

STIPULATION

BETWEEN PETITIONER AND RESPONDENT

[Tr. 369 and 370]

MR. DAWSON: All right. It is stipulated by and between counsel for the respective parties that if the remaining plaintiff's other than the widows of the former deceased guards, were called as witnesses in this case, that their testimony would be only cumulative to the testimony already entered in the record here as to the work performance and as to the "A", "B", and "C" shifts of the guards and other testimony relative to the work performed by the plaintiffs in the Frankford Arsenal which is the subject matter of this litigation. Do you so stipulate, Mr. Kincaid?

MR. KINCAID: I so stipulate.